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NOV 24, 97

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re San Pasqual's, Inc.

Serial No. 74/435,113

Susan B. King for San Pasqual's, Inc.

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109 (Deborah S. Cohn, Managing Attorney).

Before Hanak, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

San Pasqual's, Inc. has filed an application to register the mark PASQUAL'S SALSARIA for services which were subsequently identified as "restaurant takeout and catering services featuring southwestern, Santa Fe and Mexican foods; [and] retail store services featuring southwestern, Santa Fe and Mexican foods and food-related items, namely corn husks, pots, pans, and utensils."¹

¹ Application Serial No. 74/435,113, filed September 14, 1993, alleging a date of first use and a date of first use in commerce of May 15, 1993.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its services, is likely to cause confusion with the following registered marks, owned by the same entity for the indicated goods and services:



restaurant services;² and foods and ingredients of foods—namely, ground sausage, prepared sandwich meat, garnish having a hot flavor and including pickles, cauliflower, onions, spices, etc., mushrooms, breadhoggie, which is an 8" loaf of bread, mushroom sauce, meat balls, pizza doughs, pizza sauce, pepperoni, pickles, ravioli, spaghetti cheese, spaghetti (dry), ground beef steaks, salad dressing, individual servings of sugar in paper bound sugar packs, spaghetti sauce, tartar sauce, sold in cans, in frozen form, and also in dry containers;³

² Registration No. 766,883 issued March 17, 1964; renewed.

³ Registration No. 849,520 issued May 21, 1968; renewed.

PASQUALE'S

restaurant services;⁴ and
foods and ingredients of
foods—namely, ground
sausage, prepared sandwich
meat, garnish having a hot
flavor and including pickles,
cauliflower, onions, spices,
etc., breadhoggie, which is
an 8" loaf of bread,
mushrooms, mushroom sauce,

meat balls, pizza doughs,
pizza sauce, pepperoni,
pickles, ravioli, spaghetti
cheese, spaghetti (dry),
ground beef steaks, salad
dressing, individual
servings of sugar in paper
bound sugar packs, spaghetti
sauce, tartar sauce, sold in
cans, in frozen form, and
also in dry containers;⁵ and

PASQUALE'S

pizzas, spaghetti, pasta and
Italian-style sandwiches for
consumption on and off the
premises and restaurant
services⁶

⁴ Registration No. 766,884 issued March 17, 1994; renewed.

⁵ Registration No. 849,521 issued May 21, 1968; renewed.

⁶ Registration No. 1,134,255 issued January 9, 1979; Sections 8
& 15 affidavit filed.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

We turn first to the question of likelihood of confusion vis-a-vis Registration Nos. 766,883; 766, 884; and 1,134,255 since these are the most pertinent of the cited registrations. Each of these registrations broadly covers restaurant services.⁷ Applicant has attempted to distinguish its particular restaurant services, i.e., restaurant takeout and catering services featuring southwestern, Santa Fe and Mexican foods, from the restaurant services in each of the above registrations, arguing that registrant's restaurants offer only Italian food. Applicant's argument is not persuasive. It is well established that the question of likelihood of confusion in a case such as this must be determined based on an analysis of the marks as applied to the goods and/or services recited in applicant's application vis-a-vis the goods and/or services recited in the cited registration. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Because registrant has not limited the nature of the restaurant services identified in any of these three registrations to a particular type, we must consider the identifications to

⁷ While Registration No. 1,134,255 also covers "pizza, spaghetti, pasta and Italian-style sandwiches for consumption on and off the premises," we have focused on "restaurant services" since these are the most pertinent goods/services. Similarly, while applicant's application also covers retail store services,

encompass all types of restaurants, including takeout restaurants which offer southwestern, Santa Fe and Mexican foods. Thus, for purposes of our analysis of likelihood of confusion, the services of applicant and registrant are legally identical and are offered to the same classes of customers.

This brings us to a consideration of the marks. As our principal reviewing court, the Court of Appeals for the Federal Circuit, has pointed out, "[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). In this case, we find that applicant's mark PASQUAL'S SALSARIA is sufficiently similar to each of the cited marks,

we have focused on its "restaurant takeout and catering services featuring southwestern, Santa Fe and Mexican foods."



PASQUALE'S

PASQUALE'S

in sound and appearance that confusion is likely when the marks are used in connection with identical services. The dominant portion of applicant's mark, PASQUAL'S, is substantially similar to PASQUALE'S in the registered marks. Applicant argues that "Pasquale" is the Italian spelling of a saint (Pascual) recognized in Spain, Latin America and Mexico as the patron saint of cooking, and therefore registrant's marks consisting of PASQUALE'S are weak. However, apart from the fact that the "historical sketch" of Saint Pascual on which applicant relies is from an undocumented source, i.e., a "framable print," there is nothing in this record to suggest that restaurant patrons in this country are familiar with the significance of Saint Pascual. Thus, applicant's argument in this regard is not well taken. With respect to applicant's argument that the SALSARIA portion of applicant's mark distinguishes its mark

from the above marks, we would point out that while SALSARIA may suggest "something associated with Latin America," it also may suggest something associated with Italy because of the "IA" ending. Further, the presence of a chef design in one of the registered marks does very little in the way of distinguishing that mark from applicant's mark because the chef simply reinforces the idea of a restaurant. In finding that applicant's mark is similar to the above marks, we have kept in mind the normal fallibility of human memory and the fact that purchasers retain a general rather than a specific impression of trademarks encountered in the marketplace. Another factor we have considered is that the record is devoid of any evidence of third-party uses and/or registrations of PASQUAL(E) marks for restaurant services.

As to applicant's claim that it is unaware of any actual confusion, this factor is of limited probative value given that the date of first use set forth in applicant's application indicates that there has been only a brief period of contemporaneous use of the marks.

In sum, we find that customers familiar with registrant's restaurant services offered under the above three PASQUALE'S and PASQUALE'S and a chef design marks, would be likely to believe, upon encountering applicant's mark PASQUAL'S SALSARIA for restaurant takeout and catering services featuring southwestern, Santa Fe and Mexican foods,

that the services originated with or were somehow associated with the same entity.

Finally, with respect to the question of likelihood of confusion vis-a-vis Registrations Nos. 849,520 and 849,521 which cover foods and food ingredients, there is no evidence in this record from which we can conclude that restaurant takeout and catering services featuring southwestern, Santa Fe and Mexican foods and the particular foods and food ingredients listed in these two registrations are related. To establish likelihood of confusion, more must be shown than that similar marks are used for food products and for restaurant services. See *Jacobs v. Multifoods Corporation*, F.2d, 212 USPQ 641 (CCPA 1982). Thus, notwithstanding the similarities between the marks, we find on this record that there is no likelihood of confusion between PASQUAL'S SALSARIA for restaurant takeout and catering services featuring southwestern, Santa Fe and Mexican foods and registrant's PASQUALE'S marks for the foods and food ingredients in the above registrations.⁸

Decision: The refusal of registration on the ground of likelihood of confusion with Registration Nos. 766,883; 766,884; and 1,134,255 is affirmed. The refusal of

⁸ We reach no finding as to whether applicant's use of PASQUAL'S SALSARIA for retail store services featuring southwestern, Santa Fe and Mexican foods and food-related items, namely corn husks, pots, pans and utensils would be likely to cause confusion with registrant's PASQUALE'S and PASQUALE'S and a chef design marks

Ser No. 74/435,113

registration on the ground of likelihood of confusion with
Registration Nos. 849,520 and 849,521 is reversed.

E. W. Hanak

G. D. Hohein

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

for restaurant services and the foods and food ingredients
listed in the cited registrations.

Ser No. 74/435,113